

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Acceleration of Broadband Deployment,)	
Expanding the Reach and Reducing the)	WC Docket No. 11-59
Cost of Broadband Deployment by)	
Improving Policies Regarding Public Rights of)	
Way and Wireless Facilities Siting)	

COMMENTS OF THE NEW YORK STATE WIRELESS ASSOCIATION

The New York State Wireless Association (“NYSWA”) submits these comments in response to the Federal Communications Commission’s recent Notice of Proposed Rulemaking (“NPRM”).

NYSWA is a state trade association whose several thousand members are directly engaged by the wireless industry and support the provision of mobile broadband services in New York State. NYSWA provides a forum for the cultivation of relationships and exchange of ideas among wireless telecommunication professionals, government officials and the public. NYSWA’s mission includes education about wireless services and the infrastructure needed to provide mobile broadband services to the public. NYSWA thanks the Commission for the opportunity to comment on this NPRM.

Many of NYSWA members are involved in the deployment of wireless infrastructure in New York State on a daily basis. NYSWA supports the Commission’s effort to add definitions and further regulatory certainty to Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 as adopted by Congress.¹ Commission rules further interpreting Section 6409 are

¹ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6409(a), 126 Stat. 156 (2012) (codified at 47 U.S.C. § 1455(a)) (“Section 6409”).

warranted, particularly based on the experiences in New York as shared with NYSWA by our members.

Indeed, divergent views have already taken hold in New York with numerous municipal building officials, municipal attorneys, planning and zoning boards, consultants and other regulatory authorities throughout New York State interpreting Section 6409 as applied to permit requests by the wireless industry. In the absence of FCC rulemaking, municipalities have adopted their own processes and requirements despite Section 6409 and prior Commission guidance. Several municipal efforts counter to Section 6409 and its intent to streamline municipal permitting for routine collocation and upgrades of wireless sites are rooted in state law concepts regarding municipal home rule over planning and zoning and the absence of mandatory timeframes for action by New York's zoning agencies under New York law.

NYSWA encourages the Commission to take the necessary steps to ensure that the benefits of Section 6409 are not delayed in New York. To that end, NYSWA urges the Commission to specifically incorporate and apply the 90 day timeframe set forth in the 2009 Declaratory Ruling², or the applicable State or local law, whichever is shorter, to Section 6409 applications. Moreover, NYSWA encourages the Commission to adopt a "deemed granted" remedy. A municipality should not be able to unilaterally extend beyond any reasonable time required to review that which Congress has already identified must be "approved" by state and local agencies.

² See Petition for Declaratory Ruling To Clarify Provisions of Section 332(C)(7)(B) To Ensure Timely Siting Review and To Preempt Under Section 253 State and Local Ordinances That Classify All Wireless Siting Proposals as Requiring a Variance, WT Docket No. 08-165, Declaratory Ruling, 24 FCC Rcd 13994 (2009), *recon. denied*, 25 FCC Rcd 11157 (2010), *aff'd sub nom.* City of Arlington, Texas v. FCC, 668 F.3d 229 (5th Cir. 2012), *aff'd*, 133 S.Ct. 1863 (2013).

These comments are being filed electronically pursuant to Section 1.1206 of the Commission's Rules.

February 3, 2014

Respectfully Submitted,

New York State Wireless Association

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